

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA,      )  
                                    )  
                                    )  
Plaintiff,                      )  
                                    )  
vs.                              )      Case No. 4:12CR115 HEA  
                                    )  
MICHAEL FLOERCHINGER,        )  
                                    )  
Defendant.                     )

**OPINION, MEMORANDUM AND ORDER**

This matter is before the Court on Defendant's Motion for New Trial [Doc. #133] pursuant to Rule 33 (a) (b) of the Federal Rules of Criminal Procedure wherein he asserts newly discovered evidence as his basis for relief. The United States of America has responded to the motion. For the reasons set forth below the Motion will be denied.

**Facts and Background**

On September 16, 2013, Petitioner proceeded to trial on the offense of Possession of Child Pornography, in violation of 18 U.S.C. §2252A(a)(5). Close in time to the conclusion the United States' case-in-chief, Petitioner indicated an interest in entering a plea of guilty. On September 19, 2013, Petitioner entered a plea of guilty. A Presentence Investigation Report was prepared and provided to the Court. Petitioner appeared for

sentencing on January 22, 2014. On that date, Petitioner was sentenced to 65 months imprisonment as well as a period of supervised release.

### **Grounds for the Motion**

Defendant asserts there is newly discovered evidence which inures to his benefit. He claims it falls into 5 categories: (1) improper litigation tactics; (2) insufficient evidence to support a guilty plea; (3) improper and impermissible admittance of evidence; (4) the weight of the evidence; and, (5) evidence to that shows knowledge and intent did not support an inference of guilt.

### **Discussion**

Petitioner filed this Motion for a new trial pursuant to Fed. R. Crim. Pro 33. Rule 33 provides remedy under circumstances where the case has been tried by jury or without a jury. There are also time limitations in which one may file a motion under Rule 33. The motion must be filed within 14 days after a verdict or finding of guilt unless the motion is based upon newly discovered evidence, in which case it must be filed within 3 years of the verdict or finding of guilt.

Rule 33 of the Federal Rules of Criminal Procedure is, by its language, specifically limited to situations where a defendant was found guilty by a jury or by the Court in the instance of a jury waived trial. The Court may vacate any judgment and grant a new trial if the interest of justice so requires. Fed. R. Crim. Pro 33. If the case was tried without a jury, the Court may take additional testimony and enter a new judgment. Rule 33. Here, Defendant entered a plea of guilty. Therefore, the rule provides no relief for this Defendant as he has failed the threshold requirement that there must have been a trial

with a subsequent finding of guilt. As such the Court will not delve into any type of analysis or discussion of Defendant's points upon which he relies.

### **Conclusion**

Based upon the foregoing analysis, Petitioner has failed to establish he is entitled to a hearing and has failed to present any basis upon which the Court may grant relief.

Accordingly,

**IT IS HEREBY ORDERED** that Motion [Doc. #133] is **DENIED**.

Dated this 1<sup>st</sup> day of May, 2017.



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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE